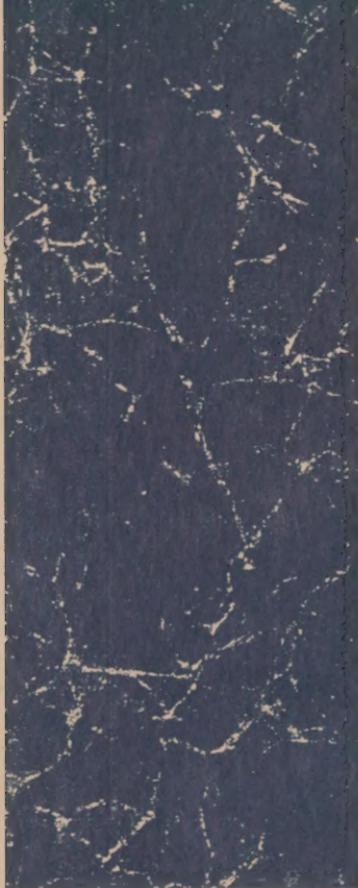


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ENVIRONMENTAL APPEAL BOARD

Guidelines of
Practice and Procedure



Ontario





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ENVIRONMENTAL APPEAL BOARD

GUIDELINES OF PRACTICE AND PROCEDURE

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ENVIRONMENTAL APPEAL BOARD

GUIDELINES OF PRACTICE AND PROCEDURE

Purpose

The intent of these Guidelines is to provide a fair, open and understandable process, to facilitate and enhance public participation, to increase the efficiency and timeliness of proceedings and avoid unnecessary length and delay, and to assist the Board in fulfilling its statutory mandate.

Definitions

1. In these guidelines:

(1) "Applicant" means a person who has by notice required a hearing by the Board under the Environmental Protection Act, the Ontario Water Resources Act, or the Pesticides Act;

(2) "Approval" includes certificate of approval;

(3) "Board" includes a panel or individual member of the Environmental Appeal Board;

(4) "Director" means the Director referred to in section 1 and subsection 81(3) of the Environmental Protection Act, section 1 and subsection 5(1) of the Ontario Water Resources Act, and subsections 1(2) and 3(1) of the Pesticides Act;

(5) "Document", in addition to documentation on paper, such as letters, maps, charts, graphs, and plans, includes videotapes, films, photographs, sound recordings and other information recorded or stored by means of any device;

(6) "Fax" means telephone transmission of a facsimile of a document;

(7) "Hearing" is the proceeding before the Board for which a notice of hearing has been given;

(8) "Interrogatory" means a question posed in writing by one party to another seeking facts or information relevant to the hearing or seeking clarification or explanation of issues or of information and material provided by the party to whom the interrogatory is addressed;

(9) "Motion" includes an application for a stay or an interim stay of an order or decision of the Director or of the Board;

(10) "Party" means the applicant who has required a hearing under the Environmental Protection Act, the Ontario Water Resources Act, or the Pesticides Act, the Director appointed under the Act, and any person or unincorporated group of persons specified by the Board as having an interest in the proceedings;

(11) "Person" includes a corporation and a person as defined in the Environmental Protection Act, the Ontario Water Resources Act, and the Pesticides Act; and

(12) "Record" includes the applicant's notice requiring a hearing; the order or decision appealed to the Board; notices of hearing, pre-hearing conferences and settlement conferences; memoranda of agreement; any interrogatories, answers to interrogatories and witness statements that have been filed; notices of motion and affidavits filed in support of motions; Board orders; transcripts; exhibits; and the Board's decision.

PART I - GENERAL

Application

2. These Guidelines apply to all proceedings of the Environmental Appeal Board.

Conflicts

3. Where any Guideline is in conflict with the Statutory Powers Procedure Act or any other Act of the Legislature or any regulation issued pursuant to an Act of the Legislature, the provisions of the relevant statute and regulations govern.

Flexibility

4. Where any matter arises during the course of any proceeding that is not contemplated by these Guidelines, the Board may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate on the matter before it.

5. Provided that all statutory requirements are met, the Board may, in accordance with the spirit of these Guidelines and in light of the circumstances of the case, dispense with compliance with all or part of any Guideline at any time, and may issue directions which shall govern the conduct of the proceedings and prevail over any provision of these Guidelines that is inconsistent with those directions. In particular, the Board may allocate procedural obligations among the parties, exempt parties from procedural obligations, limit procedural obligations or carry out these obligations itself, based on the capabilities, interests and resources of the parties.

Enlarging or Abridging Time

6. (1) Where any time or time limitation is mentioned in these Guidelines, the Board may, on its own initiative or upon motion by a party to the proceedings, extend or abridge the time prescribed on such terms, if any, as the Board deems necessary.

(2) The Board's discretion under sub-guideline (1) may be exercised before or after the expiration of the time prescribed.

Computation of Time

7. (1) In the computation of time under these Guidelines or an order or direction of the Board or its Secretary , except where a contrary intention appears:

- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if the words "at least" are used;
- (b) where a period of seven days or less is prescribed, holidays shall not be counted;
- (c) where a period of eight days or more is prescribed, the days shall be counted by including holidays;
- (d) where the time for doing anything under these Guidelines expires on a holiday, the act may be done on the next day that is not a holiday; and
- (e) if a document is received after 4 p.m. on any day, or at any time on a holiday, the document shall be deemed to have been served, given, provided or filed on the next day that is not a holiday.

(2) Under these Guidelines, "holiday" means:

- (a) any Saturday or Sunday
- (b) New Year's Day
- (c) Good Friday
- (d) Easter Monday
- (e) Victoria Day
- (f) Canada Day
- (g) Civic Holiday
- (h) Labour Day
- (i) Thanksgiving Day
- (j) Remembrance Day
- (k) Christmas Day
- (l) Boxing Day, and
- (m)any special holiday proclaimed by the Governor General or the Lieutenant Governor,
- (n) where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday; and
- (o) where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays; and where Christmas Day falls on a Friday, the following Monday is the Boxing Day holiday.

Provision of Information to the Board

8. (1) Within seven days of receiving a notice requiring a hearing in regard to an order or decision, the Director shall send to the Board Secretary a copy of the order or decision appealed from and any reasons for the decision. If the decision appealed from was a refusal, suspension, cancellation or revocation, or a refusal to renew, the Director shall also send a copy of the application for the licence, permit or approval that was refused, or the licence, permit or approval that was suspended, cancelled, revoked or not renewed.

(2) Within 28 days of receiving the notice requiring a hearing, the Director shall send to the Board Secretary a copy of any supporting documents submitted by the applicant and any other documents in the Director's file that he or she considers relevant to the proceedings.

(3) Within 28 days of delivering a notice requiring a hearing, the applicant, or if so directed, the Director or another party, shall send to the Board Secretary the names and addresses of:

- (a) all owners and tenants of land within 120 metres of the property or facility in question;
- (b) the clerks of the local municipality, township, and district, regional municipality, or county in which the property or facility is situated; and

(c) such additional persons as the Board or its Secretary may direct.

9. A party who wishes any portion of the Board's proceedings to be conducted in French or requires translation services, including services for the visually or hearing impaired, shall notify the Board of this in writing as soon as he or she becomes aware of this desire or requirement.

Request to Fix a Date

10. At least ten days after the Director has been served with the notice requiring a hearing, the applicant or the Director may request the Board to fix a date for the hearing or for a pre-hearing conference, by communicating this request orally or in writing to the Board Secretary.

Notice

11. Those persons who are to receive notice of a motion, pre-hearing conference, settlement conference or hearing shall include:

- (a) the applicant, the Director, and all other parties; and
- (b) such other persons as are determined by the Board.

12. (1) The Board may:

- (a) provide to the applicant or person bringing a motion directions for giving notice; and

- (b) approve the form and content of the notice prepared by the applicant or person bringing a motion; or
 - (c) prepare the notice itself following consultation with the applicant or person bringing a motion.
- (2) The cost of giving notice of a pre-hearing conference and the hearing shall be borne by the applicant unless the Board otherwise directs.
- (3) The cost of giving notice of a motion shall be borne by the person bringing the motion unless the Board otherwise directs.

Form and Content of Notices

13. (1) A notice of motion, pre-hearing conference, settlement conference or hearing shall be in writing unless the Board otherwise directs, and shall include the following information:

- (a) the names of all applicants and respondents;
- (b) the name of the person making the motion or requesting the pre-hearing conference, settlement conference, or hearing;
- (c) a reference to the statutory authority under which the motion is made, or the pre-hearing conference, settlement conference, or hearing is being held;

- (d) a statement of the time, day, date and place and purpose of the motion, pre-hearing conference or hearing; and
- (e) a statement that if the person notified does not attend and identify herself or himself to the Board, the Board may proceed in that person's absence and that person is not entitled to any further notice of the motion, pre-hearing conference, settlement conference or hearing, as the case may be.

(2) A notice of motion shall also include the grounds for the motion, a list of documents to be relied on at the hearing of the motion, and a statement of the relief sought, and shall include all supporting materials together with an indication of any oral evidence sought to be presented.

Giving or Service of Notices and Documents

14. (1) The applicant, or if so directed by the Board, the Director or the Board Secretary, shall give notice of the hearing at least twenty-one days before the hearing is to commence, unless otherwise directed by the Board, to all other parties and to the persons listed in sub-guideline 8(3)(a) to (c).

(2) A person bringing a motion shall give notice of the motion to all other parties at least seven days before the hearing of the motion is to commence, unless otherwise directed by the Board.

(3) The applicant, or if so directed by the Board, the Director or the Board Secretary shall give notice of a pre-hearing conference or settlement conference to all other parties and to any other person the Board directs at least seven days before the conference is to commence.

15. (1) Where a notice is to be given or a document is to be served, provided or filed under these Guidelines, this may be done in any of the following ways:

- (a) by personal delivery;
- (b) by regular, certified or registered mail;
- (c) by courier service, including priority post;
- (d) subject to sub-guideline (3) by telephone transmission of a facsimile (fax);
- (e) by depositing the document at a document exchange of which the person to be provided the document or his or her lawyer or agent is a member; or
- (f) by such other method as the Board or the Board Secretary may direct.

(2) A notice that is given or a document that is served, provided or filed by fax shall include a cover page or a notation on the first page of the notice or document indicating:

- (a) the sender's name, address, and telephone number;
- (b) the name of the person to be served;
- (c) the date and time the document is transmitted;
- (d) the total number of pages transmitted including the cover page;
- (e) the telephone number from which the document is transmitted; and
- (f) the name and telephone number of a person to contact in the event a problem arises with the transmission.

(3) No document longer than ten pages may be served on the Board or filed with the Board by fax without the prior consent of the Board Secretary, or Chair or Vice-Chair.

(4) If the party to be notified or served or provided with a document is represented by a lawyer, the notice or document shall be given to or served on the lawyer rather than his or her client.

- (5) (a) In addition, where it is required by law that the public be informed of a proceeding before the Board, or where the Board considers it appropriate that the public be informed, the Board or the Board Secretary may require a public notice to be issued in such manner as is appropriate in the circumstances. This will usually be by publication on at least one occasion in a newspaper having general circulation in the locality of the property which constitutes the subject-matter of the notice requiring a hearing.
- (b) the public notice shall be published both in English and French in those areas of the Province designated as bilingual in the French Language Services Act.
16. (1) Giving of notice and service or provision of documents will be considered to be effective within the time frames indicated below:
- (a) If delivered by hand to the person to whom the notice or document is directed or to his or her lawyer, notice or service or provision of a document is effective on the same day as the delivery.
- (b) If delivered by registered, certified, or regular mail, notice or service or provision of a document is effective on the fifth day (or in relation to hearings under the Ontario Water Resources Act, section 51(2), the seventh day) after the day of mailing.
- (c) If delivered by courier, including Priority Post, notice or service or provision of a document is effective upon receipt, or on the second day after the document is given to the courier by the party serving or providing it, whichever is sooner.
- (d) If delivered by fax, notice, service or provision of the document is effective on the same day as the transmission was made.
- (e) If given by document exchange, where deposited and date stamped in the presence of the person depositing the document, notice, service or provision of the document is effective one day after the deposit.

Note: this method is valid only where the recipient is a member of a document exchange. The Board is not a member of a document exchange.

(f) If delivered by any other means directed by the Board, notice, service or provision of the document is effective within the time frames specified by the Board or its Secretary.

(2) If the person to whom notice, other than the notice requiring a hearing, is being given or to whom a document is being served or provided establishes that he or she did not, acting in good faith, through accident, absence, illness or other cause beyond his or her control receive the notice or document until a later date, the Board may deem giving of notice or service or provision of the document to be effective at a later date or may extend the date for giving of notice or service or provision of the document.

Filing of Notices and other Documents

17. (1) Where a notice or document is to be filed with the Board, the date of filing is the date on which the notice or document arrives at the Board's office or is provided to the Board at the motion, pre-hearing conference or hearing.

(2) When the Board must receive an original document, such as an affidavit with an original signature, if filing is done by fax, the original shall be made available for filing as an exhibit at the hearing of the motion, pre-hearing confer-

ence, settlement conference or at the hearing; as the case may be.

Proof of Service

18. (1) Service of every document or giving of notice in respect of a matter before the Board shall be evidenced by an affidavit, filed with the Board, setting out how and when service was effected. The original document or notice or a copy of the document or notice, or if the notice was published, an original or a copy of each page of the newspaper containing the notice, shall be attached to the affidavit and marked as an exhibit to the affidavit.

(2) A party other than the Director who is an individual and is not represented by a lawyer or agent may prove that he or she gave notice or served or provided a document by filing a statement of service in Form 1 with the original or a copy of the document or notice attached to it, instead of an affidavit.

(3) A party's or his or her lawyer's or agent's written admission or acceptance of service is sufficient proof of service and need not be verified by affidavit.

Board May Proceed

19. Where notice of a motion, pre-hearing conference, or hearing has been given in accordance with these Guidelines and statutory requirements and a party does not attend the hearing of the motion, pre-hearing conference, or hearing, the Board may proceed in that party's absence and that party is not entitled to any further notice of that portion of the proceedings, unless the Board otherwise directs.

Motions, including Applications for Stays of Orders and Decisions of Directors and Stays of Board Decisions

20. Motions may be made by the applicant and the Director and by any other person seeking to become a party before the hearing. After the hearing commences, other persons may make motions if they obtain permission from the Board.

21. Except for motions to be heard at a hearing, before a notice of motion is served an appointment shall first be obtained from the Board for hearing the motion.

22. The Board, in hearing a motion, may permit oral evidence in addition to or instead of any affidavit or other supporting material accompanying the notice of motion. Any person wishing to adduce oral evidence on a motion shall satisfy the Board that this is necessary and will not prejudice any party, or result in undue cost or inconvenience to the Board, and may if the Board

grants permission, arrange at his or her own expense for the presence of a court reporter.

23. Any party wishing to depart from the procedures for motions specified by these Guidelines shall, at the earliest opportunity available, obtain the Board's leave to do so. Leave shall be sought either during the course of an already scheduled appearance before the Board at which all other parties are present, by written notice of motion, or by arranging a telephone conference call with the Board or the Board Secretary and all other parties to the hearing. At the time leave is sought the other parties shall have an opportunity to make submissions regarding the propriety of the request and the need for the Board to impose terms and conditions in the event leave is granted in whole or in part.

24. Any affidavits filed in response to a motion shall be served and filed at least two days prior to the hearing of the motion, except where leave for an abridgment of the time has been granted pursuant to Guidelines 23 and 6.

Motions to Stay

25. Notwithstanding anything in these Guidelines, an applicant seeking a stay or interim stay of an order or decision of a Director shall, before serving a notice of motion:

(a) serve on the Director and any other parties and file the affidavits on which he or she intends to rely in support of the application; and

(b) arrange a conference call between the parties and the Board Secretary to discuss the deadlines for filing of respondents' affidavits, arrangements for cross-examination on affidavits, if any, the time and place for the hearing of the application, and any other matters necessary for scheduling the hearing of the stay application.

26. (1) Where any party wishes to cross-examine on an affidavit filed in support of or in response to a motion, that party shall arrange for an appointment with an Official Examiner, or any person agreed upon by the parties to record the cross-examination, and shall file with the Board at least two days before the hearing of the motion, one copy of the transcript of the cross-examination to be filed as the official exhibit and one copy for each member hearing the motion:

(2) Where an adjournment of the hearing of the motion is necessary to permit cross-examination, the party wishing to cross-examine shall seek leave of the Board to adjourn the hearing of the motion. The Board may grant leave on such terms and conditions as the Board

considers just. These terms and conditions shall be deemed to include the requirement that the cross-examining party arrange for an appointment with an Official Examiner or other person agreed upon for recording the cross-examination and provide the Board at least two days before the hearing of the motion with one copy of the transcript of the cross-examination to be filed as the official exhibit and one copy for each member hearing the motion or application; or

(3) A party who wishes to cross-examine the deponent or any other person before the Board on the return of the hearing of the motion shall seek leave of the Board to do so. The Board may grant leave on such terms and conditions as the Board considers just, which terms and conditions shall be deemed to include the requirement that if any of the parties wish the cross-examination to be recorded they arrange at their own expense for the attendance of a court reporter at the hearing of the motion.

Hearing of Motions by Conference Telephone Call

27. Where all parties and the member or panel before whom the motion is to be heard consent, or in urgent circumstances without the consent of all parties, the motion may be heard by means of a conference telephone call.

Postponements and Adjournments

28. (1) A date for a hearing, pre-hearing conference, settlement conference or motion that has been fixed by the Board with the agreement of all parties or counsel for the parties will be considered peremptory to all consenting parties. Counsel will be considered to have committed themselves to be present on the date fixed and to have undertaken to make no other commitments that will render their attendance impossible.

(2) The Board may grant an adjournment during the course of the hearing, pre-hearing conference, settlement conference, or motion, upon motion made orally and upon such terms and conditions as the Board may deem appropriate.

Dismissal for Delay or Non-Compliance with Orders or Guidelines

29. (1) The applicant may move to have an appeal granted and the Order or decision of the Director revoked where the Director has (i) failed to forward documents or information requested in writing by the Board and necessary for the scheduling of a hearing, (ii) failed to request a date for a hearing within six months after being served with notice of the appeal, (iii) refused to proceed with a hearing after being notified of the date of the hearing, (iv) failed to comply with any order made by the Board setting out procedural steps to be taken by the Di-

rector prior to the commencement of the hearing, or (v) failed to comply with these Guidelines.

(2) Where the circumstances listed in subsection (1) exist, the Board may, on its own initiative, schedule a status hearing, and the Board Secretary shall mail to the applicant, the Director, and any other parties, or their solicitors of record, a notice of status hearing at least 30 days before the date fixed for the status hearing.

(3) A solicitor who receives a notice of status hearing shall forthwith give a copy of the notice to his or her client.

(4) Unless the Director has agreed to a date for the hearing of the appeal or has rectified his or her failure or refusal before the date fixed for the status hearing, the Director or his or her solicitor shall attend, and the applicant and any other parties may attend, at the status hearing.

(5) At the hearing of a motion under sub-guideline (1) or at a status hearing, the Director shall show cause why the appeal should not be granted and his or her order or decision revoked, and, if the Board is satisfied that the appeal should proceed, the Board may set time periods for the remaining steps necessary to schedule a hearing and may set a date for a hearing or order that a hearing be held within a specified time; or, if the Board is satisfied that

the failure of refusal was deliberate or occurred without reasonable excuse or has unduly prejudiced another party, the Board may grant the appeal and revoke the order or decision of the Director, or take any steps or make any order as is just.

30. (1) The Director may move to have an appeal dismissed where the applicant has (i) failed to forward documents or information requested in writing by the Board and necessary for the scheduling of a hearing, (ii) failed to request a date for a hearing within six months after commencing an appeal, (iii) failed to attend a hearing, or refused to proceed with a hearing after being notified of the date of the hearing, (iv) failed to comply with any order or direction of the Board setting out procedural steps to be taken by the applicant prior to the commencement of the hearing, or (v) failed to comply with these Guidelines.

(2) Where the circumstances listed in subsection (1) exist, the Board may, on its own initiative, schedule a status hearing, and the Board Secretary shall mail to the applicant, the Director, and any other parties, or their solicitors of record, a notice of status hearing at least 30 days before the date fixed for the status hearing.

(3) A solicitor who receives a notice of status hearing shall forthwith give a copy of the notice to his or her client.

(4) Unless the applicant has agreed to a date for the hearing of the appeal or has rectified his or her failure or refusal before the date fixed for the status hearing, the applicant or his or her solicitor shall attend, and the Director and any other parties may attend, at the status hearing.

(5) At the hearing of a motion under subsection (1) or at a status hearing, the applicant shall show cause why the appeal should not be dismissed, and, if the Board is satisfied that the appeal should proceed, the Board may set time periods for the remaining steps necessary to schedule a hearing and may set a date for a hearing or order that a hearing be held within a specified time; or, if the Board is satisfied that the failure or refusal was deliberate or occurred without reasonable excuse or has unduly prejudiced another party, the Board may dismiss the appeal, or take any steps or make any order as is just.

Pre-Hearing and Settlement Conferences

31. In any proceeding the Board, on its own initiative or on the motion of any party or any person seeking party status, may direct the parties to make submissions in writing or may hold one or more pre-hearing or settlement conferences, for the purposes of:

(a) identifying parties;

- (b) defining, formulating or simplifying issues;
- (c) clarifying, amplifying or limiting an application, intervention or reply;
- (d) deciding the procedure to be adopted in the proceeding;
- (e) disclosing evidence, including
 - (i) identifying documents the parties intend to rely on;
 - (ii) exchanging or arranging for the exchange of documents among parties;
 - (iii) identifying witnesses, the nature of their evidence, and their order of presentation;
 - (iv) considering the advantages and disadvantages of filing witness statements and interrogatories and establishing a procedure for their service and filing if needed;
- (f) setting the date and place for commencement of the hearing;
- (g) estimating the length of the hearing;
- (h) deciding any other matters that may aid in the simplification or just disposition of the proceeding;
 - (i) considering the possibility of settlement of any or all of the issues in the proceeding; and
 - (j) for any other purpose that the Board deems appropriate.

32. Whoever attends a pre-hearing conference on behalf of the parties or persons seeking party status must be authorized to take positions on and make decisions regarding the matters listed in Guideline 31 and must be authorized to enter into a memorandum of agreement setting out the results of the conference.

33. Issues raised at a pre-hearing or settlement conference may be determined by the parties or their counsel signing a memorandum of agreement setting out the results of the conference or by the Board making an order, and the memorandum or order binds the parties to the memorandum or order unless the member or panel conducting the hearing orders otherwise.

34. No communication shall be made to the member or panel presiding at the hearing or a motion with respect to any statement made at a settlement conference, except as disclosed in the memorandum or order under Guideline 33.

35. A member of the Board who conducts a pre-hearing or settlement conference shall not participate in the hearing without the consent of all parties to the hearing.

PART II - DISCLOSURE OF EVIDENCE, PARTICULARS, ETC.

Disclosure of Documents

36. (1) Unless the Board orders otherwise, all parties shall:

- (a) disclose in writing to all other parties within the time set out in the notice of hearing, or if the notice of hearing is silent, no later than 15 days before the commencement of a hearing, the existence of every document relating to any matter in issue in the hearing that is or has been in the possession, control or power of that party, whether or not privilege is claimed and regardless of whether that party intends to adduce the document in evidence; and
- (b) provide free of charge to all other parties within the time set out in the notice of hearing, or if the notice of hearing is silent, no later than 15 days before the commencement of a hearing a copy of every document in the possession, control or power of that party which that party intends to adduce in evidence at the hearing.

(2) Any party may give notice in writing to any person in whose notice requiring a hearing, notice of motion, affidavit, disclosure, witness statement, answer to an interrogatory, or report, reference has been

made to a document, to produce that document. Within 10 days from receipt of such a notice, the person shall, except if privilege is claimed, produce the document for inspection by the person giving the notice and permit him or her to make copies of it; or make copies for the person requesting production at reasonable cost to him or her.

(3) Any documents produced pursuant to this Guideline, and any witness statements and answers to interrogatories produced for the purpose of preparation for the hearing, shall not be released by any party to whom they have been produced to anyone but counsel or witnesses requiring them for the purposes of preparation of that party's case, and all persons to whom these documents have been produced or released for the purposes of case preparation shall not release them to anyone else, unless and until the documents have been received in evidence by the Board, or, in the case of answers to interrogatories and witness statements, the relevant witnesses have testified.

(4) In addition to any other penalty or consequence of non-compliance, any person or party who fails to comply with sub-guidelines (1), (2) or (3) is not entitled to adduce the document in evidence on that party's behalf unless that party satisfies the Board that there is sufficient cause for not complying.

Interrogatories

37. (1) The Board may, on its own initiative or at the request of any party, order that interrogatories be exchanged among the parties.

(2) When interrogatories and answers to interrogatories are ordered, the parties upon which each party is to serve such interrogatories and answers and the dates by which they are to be served shall be determined by the Board.

38. (1) Interrogatories shall contain a written request for information directed from one party to another party, and shall be addressed to the party; numbered consecutively for each item of information requested, dated, and served within the time limit directed by the Board.

(2) Where interrogatories have been directed to a party and served on that party in accordance with the Board's direction, the party shall:

- (a) provide a full and adequate answer to each interrogatory; and
- (b) serve a copy of the answers within the time limit and upon the parties as directed by the Board.

(3) Answers to interrogatories shall correspond to the form and content of the interrogatories.

(4) A party who is unable or unwilling to provide a full and adequate answer to an interrogatory shall:

- (a) where the party contends that the interrogatory is not relevant, provide a response that sets out reasons in support of that contention;
- (b) where the party contends that the information necessary to provide an answer is not available or cannot with reasonable effort be provided, provide a response that sets out the reasons for the unavailability of such information and provide any alternative available information that the party considers would be of assistance to the person directing the interrogatory;
- (c) where the party contends that the information sought is of a confidential nature, provide a response that sets out the reasons why it is considered privileged or otherwise confidential; or
- (d) otherwise explain why such an answer cannot be given.

(5) Where a party is not satisfied with the responses given, the party may file a motion to have the matter settled by the Board.

(6) Where answers to interrogatories directed to the applicant are not served within the time ordered or do not answer the questions of the party submitting the interrogatories, a motion may be brought to compel a response or to dismiss the appeal and the Board may take any steps or make any order as is just.

Witness Statements

39. (1) The Board may, on its own initiative or at the request of any party, order that witness statements be exchanged among the parties.

(2) When witness statements are ordered, the parties upon which each party is to serve such witness statements and the dates by which they are to be served shall be determined by the Board.

40. (1) Witness statements shall contain the following:

- (a) name and business address of the witness (and qualifications or curriculum vitae, if appropriate);
- (b) a statement of whether the witness has an interest in the application and, if so, the nature of the interest;
- (c) a statement of whether the evidence will be factual evidence or opinion evidence or both;

- (d) a statement of whether the witness has some special skill which he or she possesses by reason of experience or study which qualifies him or her to give evidence;
 - (e) a full but concise statement of the evidence;
 - (f) reference to and identification of proposed exhibits which are part of the witness' evidence, including: supporting documents, plans, reports, technical memoranda, etc. (A separate sheet shall be attached to the statement listing the exhibits);
 - (g) an acknowledgement that the witness intends to appear before the Board if requested by the party submitting his or her witness statement and be subject to examination and cross-examination; and
 - (h) the date of the statement.
- (2) A formal report prepared by the witness for the purpose of the hearing may be utilized as a witness statement, provided that the required information is contained in it or supplied as an addendum.

Further Information

41. The Board may order any party to provide such further information, particulars or documents as the Board considers necessary for a full understanding of the issues.

Filing of Information

42. The Board or the Board Secretary may require that any list of documents, interrogatory, answer to an interrogatory, witness statement or other information, particulars or documents provided by the parties to each other be filed if in the Board's opinion this is necessary for the fair, efficient, or timely disposition of any portion of the proceedings.

Consolidation of Appeals

43. (1) Where the Board considers that two or more appeals are related to each other because:

(a) they are made against the same person and bring into question the same or a similar issue; or

(b) they have questions of law or fact in common,

the Board may combine the appeals and deal with them in one proceeding.

(2) The Board Secretary may schedule two or more appeals together for a hearing, and the Board may direct consolidation.

PART III - HEARING PROCEDURES AND EVIDENCE

Hearings in French

44.(1) (a) The Board may conduct its proceedings or any portion of them in the French language when a request is made

before the hearing commences, by the applicant, the Director, another party, or a person seeking party status who speaks the French language.

(b) After the commencement of the hearing, the Board will proceed in French only if the Board considers it necessary for the fair disposition of the matter.

(2) Nothing herein shall preclude the presentation of submissions or evidence in either the French or the English language.

(3) Where a hearing is to be conducted in the French language, the notice of such hearing shall specify that the hearing is to be so conducted and shall further specify that English may also be used.

(4) Where a written submission or written evidence is provided in either French or English, the Board may order any party or person presenting such written submission or written evidence to provide it in the other language if the Board considers it necessary for the fair disposition of the matter.

Other Languages and Assistance to Visually and Hearing Impaired Participants

45. (1) Where it is brought to the Board's attention that,

- (a) a party would prefer to give evidence in another language and to have the evidence of others interpreted into that other language,
- (b) a witness would prefer to give evidence in another language, or
- (c) services are required to assist persons who are visually or hearing impaired or have any other disability to participate in the proceedings, the Board may provide such interpretation or other services at its own, or the applicant's expense.

(2) Prior to a notice of hearing being given, the Board may determine that notice should be given in a language other than French or English and may provide such notice at its own expense.

Media Coverage

46. (1) Radio, television and motion picture videotaping, filming or recording of Board proceedings or any portion of them may be permitted at the discretion of the Board, subject to any terms and conditions the Board may impose.

(2) Where permission is sought under sub-guideline (1), a request should be made to the presiding Chair prior to the commencement of the part of the hearing sought to be recorded.

(3) The presiding Chair may disallow the video taping, filming or recording of all or portions of the hearing if, in the opinion of the Chair, such coverage may inhibit specific witnesses or disrupt the process in any way.

(4) In cases where videotaping, filming or recording is allowed, the following guidelines shall be applied, unless the presiding Chair orders otherwise:

- (a) only photographic and audio equipment which does not produce distracting sound or light should be used;
- (b) when possible, audio pick-up should be from existing audio systems present in the hearing facility; and
- (c) photographic and audio equipment should be positioned unobtrusively before the proceedings begin and must not be moved while the hearing is in progress.

Court Reporters and Recording of Hearing

47. (1) The Board may require that a court reporter attend hearings, pre-hearing conferences, and motions of the Board.*

(2) When a court reporter is required to attend by the Board or a party, the reporter shall record all testimony and argument.

* NOTE: Under section 47 of the Ontario Water Resources Act, relating to well permits and licences and in hearings under the Pesticides Act, recording of testimony is mandatory. In all other hearings, it is optional.

(3) All transcripts or copies of transcripts and all electronic records ordered by parties to the proceedings or other persons shall be paid for by those parties or other persons.

(4) Where the Board does not intend to require the attendance of a court reporter at the hearing, it will give notice of this to the applicant and the Director.

(5) (a) Where the Board does not require the attendance of a court reporter, any party may arrange the attendance of a court reporter at his or her own expense, provided that the first party to order a transcript shall also order a copy to be provided to the Board as part of the record at no charge.

(b) The Board may enter into agreements with any party or parties who arrange for the attendance of the court reporter at their own expense to share the cost of the court reporter's attendance and of purchasing transcripts.

Documents as Evidence

48. (1) Any party tendering a document as evidence must provide in addition to the original document, one copy for each Board Member, for each party, and for the court reporter.

(2) Unless the Board orders otherwise, in any hearing expected to last more than two days, documents provided as evidence shall be submitted in the following format:

(a) All documents except bound volumes shall be punched with three holes for insertion in a standard 3-ring binder;

(b) For ease of reference, the pages of documents shall be consecutively numbered from the beginning of the document to its end. Alternatively, if the document is divided into sections, the pages of each section may be consecutively numbered from the beginning of the section to its end, provided that the sections are clearly identified by tabs that are consecutively numbered or lettered; and

(c) If a person is printing or photocopying documents for presentation to the Board, they shall be printed or photocopied on both sides of the page.

(3) Where a document has been filed in evidence at a hearing, the Board may, or the person providing it or entitled to it may, with leave of the Board, cause the document to be photocopied and the Board may authorize the photocopy to be filed in evidence in place of the original document filed and release the original document.

Summons

49. (1) The Board may issue a summons to a witness on its own initiative or upon request of a party.

(2) The Board may by summons require any person, including a party,

(a) to give evidence under oath or affirmation; and

(b) to produce in evidence such documents or other things as are specified in the summons, relevant to the subject matter of the proceedings and admissible in evidence.

(3) Any summons issued shall be served personally on the person summoned, and the person shall be paid the same fees and allowances as a witness summoned to attend before the Ontario Court of Justice (General Division). The fees and allowances need not be paid in advance, but must be paid before the witness testifies, if requested.

(4) The party requesting the summons from the Board shall ensure that it is served within a reasonable time before the date the

witness' attendance is required.

(5) The summons may be in Form 2 or in any other form conveying substantially the same information as that form.

NOTE: Form 2 to these Guidelines is substantially the same as Form 1 under the Statutory Powers Procedure Act.

Conduct of Motions During Hearings

50. Notwithstanding any time limits specified in the guidelines for motions, any party intending to bring a motion at a hearing shall give all other parties adequate opportunity to prepare for the hearing of the motion, including providing as much notice as possible and providing copies of cases and statutes relied on.

Opening Statements

51. Unless the Board otherwise directs,

(1) At the beginning of each hearing, each party shall give a brief opening statement that describes the issues that party will address at the hearing. The statement should include an outline of the evidence the party intends to call, a list of witnesses; the topics to be covered, and the amount of time required.

(2) The opening statements will be made in the following order:

- (a) The Director;
- (b) The applicant;
- (c) Other parties.

Order of Presentation

52. Evidence at a hearing shall be presented by parties as the Board may direct and, in the absence of any such direction in the following order:

- (1) the Director;
- (2) other parties whose interest or position is, in the Board's opinion, similar to the Director's;
- (3) the applicant;
- (4) other parties whose interest or position is, in the Board's opinion, similar to the applicant's;
- (5) the Board's witnesses, if any;
- (6) the Director, in reply;

53. Parties shall examine, cross-examine and re-examine witnesses as the Board may direct and, in the absence of any such direction in the following order, but with the order rotating in accordance with which party is presenting evidence:

- (1) the Director;
- (2) other parties whose interest or position is, in the Board's opinion, similar to the Director's;
- (3) the applicant;
- (4) other parties whose interest or position is, in the Board's opinion, similar to the applicant's;
- (5) the Board's counsel, if any;

- (6) the Director in re-examination;

Oath or Affirmation

54. Witnesses who appear personally at a Board hearing shall be examined orally under oath or after affirming that their evidence will be true.

Exclusion of Witnesses

55. The Board may, upon motion, order a witness or witnesses to be excluded from the hearing until called to give evidence.

Expert Witnesses

56. (1) A witness having technical or special knowledge, who is retained by a party or the Board to give evidence, shall provide a written curriculum vitae of his or her qualifications and experience.

(2) The Board will not normally hold a formal hearing to qualify a witness as an expert, provided that a degree of specialized knowledge is shown on the curriculum vitae. However, any party may challenge the qualifications of a witness having technical or special knowledge, before or during the course of his or her testimony.

(3) The Board, in its discretion, will determine the weight to be given each witness' testimony and the witness' qualifications and experience will be a factor in determining the weight to be given such testimony.

57. On the request of a party or on its own initiative, the Board may retain at its own expense any person having technical or special knowledge to assist the Board and to give evidence in respect of any matter before it. In such cases, the following procedures shall govern:

(1) Any such request shall be made by motion to the Board as soon as practicable after the appointment of the hearing panel or at a pre-hearing conference if one is held, and otherwise as soon as practicable after the need for such a witness is recognized by the party;

(2) the Board must be satisfied that the proposed witness will be of assistance to the Board in understanding the issues before it;

(3) the Board shall decide who shall be appointed;

(4) the Board shall retain the right to settle all terms of any such appointment, including remuneration and the scope of any inquiry, and may direct that such witness:

(a) provide a written report of findings and conclusions;

(b) attend the hearing during presentation of evidence by others expert in the same field; and

(c) explain and evaluate such evidence as required by the Board.

(5) Any witness retained by the Board shall testify orally and be subject to cross-examination.

Witness Panels

58. (1) The Board may permit evidence to be given by a number of witnesses sitting as a panel, provided that the Board is satisfied that in the particular case the tendering of evidence in this manner will result in a full and fair hearing and is in the public interest.

(2) Questions addressed to a witness panel may be directed to specific members of the panel or to the panel in general.

(3) Where a question is directed to a specific member of a panel and he or she asserts an inability to answer due to lack of knowledge or qualifications, the Board may permit another member of the panel to provide the answer.

Agreed Facts

59. The Board may receive and act upon any facts agreed upon by the parties without proof or evidence.

Site Visits

60.(1) (a) The Board may, on its own initiative or at the request of any party, make one or more site visits or property inspections to better understand the evidence given at the hearing.

(b) The Board shall in each case set out the guidelines and procedures to be followed during the site visit or property inspection.

(2) Where a site visit or property inspection is made, the Board shall indicate on the record the fact that it made the visit or inspection, the date and time and those present. All parties are entitled to be present throughout the visit or inspection. The Board may also indicate on the record any observations it considered significant.

Hearings in Camera

61. (1) Subject to sub-guideline (2) where in any proceeding the Board directs a hearing or a portion thereof to be held in camera, the hearing may be attended only by:

- (a) the person who is to present confidential information at the hearing;
- (b) Board staff;
- (c) counsel or agent for the witness and for the parties to the proceeding, unless the Board considers, in its opinion, that there is good reason why an agent should not be permitted to attend the in camera hearing;
- (d) a consultant, to assist a party or his or her counsel or agent, should the Board consider the matter in issue sufficiently complex to warrant assistance,

and

(e) such other persons who the Board considers should be present.

(2) All persons permitted to attend the in camera hearing, except for Board staff, shall file a Declaration and Undertaking, in Form 3.

(3) Where an expert witness is to testify at the hearing, confidential information may be made available to that witness at the discretion of the Board, subject to the witness filing a Declaration and Undertaking in Form 3, and on any conditions as directed by the Board.

(4) Transcripts of the in camera hearing may be made available at the discretion of the Board to the authorized representatives who have filed a Declaration and Undertaking.

(5) If portions of any argument relate to the in camera hearing and require more detail than through a general reference to a named witness or a numbered exhibit,

- (a) oral argument may be given in camera, or
- (b) the relevant portion of the written argument may be separately submitted and handled in accordance with sub-guide-line (7).

(6) All persons attending the in camera hearing shall return their transcripts and any other confidential documents to the Board Secretary at the end of the argument phase of the hearing and shall destroy their notes relating to the in camera hearing within a reasonable time or take appropriate steps to protect their confidentiality.

(7) Exhibits, transcripts and arguments with respect to the in camera hearing and all other confidential information filed with the Board under this Guideline shall be marked "Confidential" and shall be kept separate from the public record and access to this material shall only be by order of the Board.

Release of Exhibits

62. Where any document or thing is filed as an exhibit, the Board may release the exhibit to any party at any time during or after the hearing on consent of the parties. In the absence of consent, the Board may return the exhibit to the party tendering it after the disposition of any appeal or, where an appeal is not taken, after the expiration of the time for appeal.

PART IV - FACILITATING PUBLIC PARTICIPATION

Public Testimony

63. Any person having relevant testimony may, with the Board's permission, testify without becoming a party to the hearing or being called as a witness by a party.

Written Submissions

64. (1) While the Board prefers evidence to be given orally at the hearing so that the evidence given may be tested by cross-examination, any person who does not wish to be a party to the hearing or testify but who wishes to make his or her views regarding the appeal known to the Board may file with the Board a written submission commenting on the appeal. The submission should describe the nature of the person's interest in the appeal and state clearly his or her views regarding the appeal, together with any relevant information that may be useful in explaining or supporting those views.

(2) Before a written submission is made part of the record, the Board shall make it available to all other parties to the hearing and provide an opportunity for parties to comment on its relevance, admissibility, and whether it would be unfair to make the submission part of the record without an opportunity to cross-examine the person making the written submission.

(3) The Board may take into account any such written submission unless, after hearing submissions, it determines that accepting it as evidence would unduly prejudice any party.

65. A person who testifies or files a written submission pursuant to this Part does not by that act alone become a party to the hearing.

Evening Sessions

66. For the purpose of allowing persons who are unable to attend the hearing during the day to give their views on an application, the Board may, at its discretion, hold one or more evening sessions during the course of the hearing.

PART V - ADDITIONAL PROVISIONS

Board Counsel

67. The Board may appoint and direct its own counsel to:

(1) advise the Board on matters of law and procedure and on such other matters as the Board requests;

(2) conduct the examination-in-chief of Board-appointed witnesses if the Board has retained such witnesses;

(3) question witnesses; and

(4) provide liaison with counsel acting on behalf of parties, and with parties that are unrepresented by counsel.

Argument and Submissions

68. (1) The Board may order the parties to submit written argument in addition to oral argument.

(2) All parties shall be given an adequate opportunity to respond to any written arguments and/or written submissions.

(3) In both written and oral argument, facts or quotations from the oral evidence on which the argument is based are to be referenced with the transcript volume and page number, if transcripts are available. If the fact or quotation is from documentation filed as an exhibit, the reference should be made to the exhibit number and page.

(4) Parties should, at the time of delivering argument, make known to the Board any terms and conditions, variations to the Director's order or decision, or directions to the Director that they would like the Board to attach to its order or decision. Copies of draft terms and conditions, variations and directions are to be distributed to other parties a sufficient time before argument is delivered to allow them to be addressed in their argument.

Decisions

69. (1) The Board may pronounce an oral decision at the end of the hearing or it may reserve its decision and provide a written decision at a later date.

(2) If the Board gives an oral decision, it may issue a written version of the oral decision at a later date.

(3) The Board may at its discretion and in an effort to provide greater clarity vary the wording of its oral decision in any written version without affecting the intent of the oral decision.

(4) The Board's decision shall include reasons for its decision.

(5) The Board may issue its reasons for decision separate from its decision.

(6) Where any Board member who sat on a hearing under the Environmental Protection Act or the Ontario Water Resources Act or the Pesticides Act, dissents in writing from the majority decision of the Board, a copy of the dissenting reasons shall be attached to the decision.

(7) The Board's decision shall be sent to all parties to the hearing, the Minister of the Environment, and such other persons as may be determined by the Board.

Effective Date of Order or Decision

70. Any Board Order or decision is effective from the date upon which it is signed unless the Board directs otherwise.

Stays of Board Decisions

71. (1) A party may make an application for a stay of the Board's decision immediately following the

pronouncement of the decision at the end of the hearing for the purpose of an anticipated appeal to Minister or the Divisional Court. Thereafter, any application for a stay shall be made to the Minister or the Divisional Court unless the Board believes that it is in a better position than the Minister or the Divisional Court to determine the issues raised in the application.

(2) A stay granted for the purpose of an anticipated appeal to the Minister or the Divisional Court shall be deemed to include a term that the stay expires at 5:00 p.m. on the last day for appealing the decision if no appeal has been commenced, and a condition that the appellant pursue the appeal without delay.

Record

72. (1) The Board shall maintain a record for each of its hearings, motions and pre-hearing conferences.

(2) One copy of the record shall be maintained and subject to sub-guideline (4) and guideline 61 shall be made available upon reasonable notice for perusal by any person during normal business hours at the Board's office.

(3) Subject to sub-guideline (4) and guideline 61, a person may examine any document filed with the Board and forming part of the public record and, upon payment of the Board's fee, take copies of such document unless a statute, an order of the court or an order of the Board provides otherwise.

(4) Subject to the Freedom of Information and Privacy Act, the Board may order that any document or part of a document filed with an application or at a hearing or any transcript or oral evidence given in camera, be treated as confidential, be sealed and not be subject to public disclosure.

(5) Any order under sub-guideline (4) shall be made only after all interested parties have had an opportunity to make submissions to the Board in respect of the confidentiality claim.

(6) Any order under sub-guideline (4) shall be made only if required by statute or if the Board is satisfied that the person making the claim will be substantially harmed if the document is not treated as confidential, and the reasons for such an order shall be provided, if a party so requests.

FORM I



Environmental
Appeal
Board

Statement of Service

Please print clearly.

NOTE: The purpose of this statement is to verify that a copy of a document was delivered to a party. A Statement of Service (Board form 1) or a statement containing all the information required in this form, must be completed for every document served, for each party. In addition, a copy of the facsimile cover transmission record, or the courier or postal receipt may be required as evidence to support this statement.

Case Name

Board File No.

Between

Applicant(s)

and

Respondent(s)

and

Other Party(ies)

Method of Service

Type of notice served

- Notice of motion (including stay application)
- Notice of pre-hearing conference
- Notice of hearing
- Other (specify)

Method of delivery

- Regular mail
- Certified mail
- Registered mail
- Courier (including Priority Post)
- Document exchange
- Facsimile copier (FAX)

Personal delivery

Address where you served document(s)

Other (specify method and time frame agreed to by Board or Board Secretary)

Name of courier, agent or service

Date document(s) sent

mm

dd

yy

Time document(s) sent

A.M./P.M.

Confirmation

Acting on behalf of Applicant Other Party

I state that I served

Name of person served

who represents

Name of party served

Name of person who served (print)

Signature

Position title

Dated at (location)

Date mm dd yy

FORM 2



Summons

(Name of Act under which proceedings arise)

Re:

To:

You are hereby summoned and required to attend before the Environmental Appeal Board

at a hearing to be held

at in the of

on day, the day of 19

at the hour of o'clock in the noon (local time)

and so from day to day until the hearing is concluded or the Board otherwise orders, to give evidence on oath touching the matters in question in the proceedings and to bring with you and produce at such time and place

Dated this day of 19

..... Chair or Member of Board

NOTE:

You are entitled to be paid the same personal allowances for your attendance at the hearing as are paid for the attendance of a witness summoned to attend before the Ontario Court of Justice (General Division).

If you fail to attend and give evidence at the hearing, or to produce the documents or things specified, at the time and place specified, without lawful excuse, you are liable to punishment by the Ontario Court of Justice (General Division) in the same manner as if for contempt of that court for disobedience to a subpoena.

FORM 3

(STYLE OF PROCEEDING)

DECLARATION AND UNDERTAKING

I (Name) , am (witness, counsel/agent, consultant, etc.) for

I hereby declare:

1. THAT I am ordinarily resident in Canada and am not an employee, officer, director or major shareholder of the party for which I act or of any other person known by me to be a participant in this hearing;
2. THAT I have read the Environmental Appeal Board Guidelines of Practice and Procedure and all Orders of the Environmental Appeal Board that relate to this hearing and I understand that these Orders may be filed with the Ontario Court of Justice (General Division). I further understand that any breach of the terms of the Orders could be the subject of contempt proceedings in the Ontario Court of Justice (General Division).

I hereby undertake:

1. THAT I will maintain the confidentiality of any information or evidence that I receive during the course of the hearing held in camera and will not disclose any information or evidence that I receive during the course of that hearing;
2. THAT I will not reproduce in any manner, without the prior written approval of the Board, any information, notes, evidence, transcripts or written submissions dealing with the evidence taken and submissions made in the hearing held in camera;
3. THAT at the end of the hearing, I will personally deliver to the Board Secretary all information provided to me by the Board during the hearing held in camera, and will destroy or safeguard the confidentiality of any notes taken by me with respect to the evidence or information that I receive during the course of that hearing.

DATED AT , Ontario this day of , 19 .

Signature:

Name:

Firm/Company:

